

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BERKSHIRE LIFE INSURANCE
COMPANY OF AMERICA.,

Plaintiff,

v.

TOM REILLY,

Defendant.

ORDER FOR DEFAULT JUDGMENT

17-cv-410-wmc

A hearing on plaintiff Berkshire Life Insurance Company of America's motion for default judgment was held this morning, August 30, 2017, at which Attorney Kaitlyn Luther appeared by phone for plaintiff and defendant Tom Reilly again failed to show or make other arrangements to appear. Accordingly, plaintiff's motion will be granted as set forth below.

Berkshire seeks rescission of two disability insurance policies issued to Reilly, as well as a declaration that the policies are null and void, based on Reilly's material misrepresentations in his insurance application. (Compl. (dkt. #1).) The complaint was filed on May 26, 2017, and Reilly was served with the complaint on July 5, 2017, making his answer due July 26, 2017. (Dkt. #5.) Because Reilly failed to answer, respond or otherwise appear, the clerk entered default on August 3, 2017. (Dkt. #8.) Plaintiff's motion for default judgment followed. (Dkt. #9.)

For purposes of deciding plaintiff's motion for default judgment, "allegations in the complaint relating to liability are true". See *Domanus v. Lewicki*, 742 F.3d 290, 303 (7th

Cir. 2014). The complaint notes several health questions Reilly was required to answer in his disability insurance application, as well as his responses denying any medical issues or treatment. (Compl. (dkt. #1) ¶¶ 8-29.) The complaint further alleges that based on the responses in his application, Berkshire issued Reilly two policies. (*Id.* at ¶¶ 30-40.)

On or about October 14, 2016, Reilly notified plaintiff of an injury and requested to make a claim for benefits. (*Id.* at ¶ 41.) As part of its investigation into that claim, however, Berkshire obtained medical records demonstrating a “significant medical and health history” that Reilly had not disclosed as part of his application. (*Id.* at ¶¶ 44-45.) As a result, Berkshire brought this lawsuit and refunded the premiums paid to date by Reilly. Having set forth facts establishing fraud in the inducement as to both policies, and Reilly having wholly failed to appear, plead or otherwise defend, Berkshire has, therefore, demonstrated its entitlement to default under Federal Rule of Civil Procedure 55(a) and 55(b).

ORDER

IT IS ORDERED THAT default judgement be entered in favor of plaintiff Berkshire Life Insurance Company of America and against defendant Tom Reilly as follows:

1. Policy Nos. Z3145890 and Z9737500 are rescinded due to material misrepresentations in the application.
2. Policy Nos. Z3145890 and Z973750 are set aside, cancelled and rendered null and void and of no effect, and Berkshire Life Insurance Company of America has no obligation or liability under those policies other than to refund the premiums paid.

3. Defendant Tom Reilly is ordered to pay statutory costs to plaintiff, including costs incurred by Reilly's failure to waive service under Federal Rule of Civil Procedure 4(d), but is otherwise relieved of further obligation or liability with respect to the subject matter of plaintiff's complaint.

Entered this 30th day of August, 2017.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge